IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1676 OF 2006

Kiran Vasant Acharekar. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr.P.G.Karande for applicant.

Mr.S.V.Saste, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 16, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant materials, which are pressed into service at the instance of the applicant.

2. This is second bail application preferred before this court. First bail application was rejected by detailed Judgment and order passed by this court on 12th October, 2004. While considering the earlier application merits of the case have been examined at length. It is not in dispute that the order passed on the earlier occasion rejecting the bail application was carried before the Supreme court by way of Special Leave to Appeal(Cri.) No.6325 of 2004 which has also been dismissed on 17th January,

2005.

3. I am informed by the learned APP that the Trial has already commenced and is progressing on day to day basis. This position is not disputed by the applicant. The offence in question is a serious offence punishable under the provisions of MCOC Act.

4. As mentioned earlier this is second bail application. It is well settled that if the earlier bail application is rejected on merits, second bail application can be considered keeping in mind the changed circumstance. In so far as changed circumstance is concerned, counsel for the applicant relies on the recent report of the Municipal Commissioner accepting findings of the Scrutiny Committee which absolves the applicant of the departmental action. That, in my opinion, will be of no avail to the applicant. The material which has been considered while examining the charge pending against the applicant in departmental enquiry cannot be the basis to straightway assume that the applicant has not committed any offence. That aspect however, will have to be considered on the basis of material collected by the Investigating Agency and filed on record alongwith charge sheet before the trial Court.

These materials were considered while examining the first bail application filed by the applicant. It is not a case where the earlier bail application has been decided against the applicant merely relying on the preliminary report in the departmental enquiry pending against the applicant. Viewed thus, it is not a case for entertaining the request for bail as the offence in question is a serious offence under the provisions of section MCOCA.

5. Counsel for the applicant has relied on paragraph 9 of the decision of the Apex Court in the case of **Babanrao Tukaram Ranjane V/s. State of Maharashtra** decided on 12th May, 2006. Reliance placed on the exposition in paragraph-9 of this decision is of no avail to the fact situation of the present case. In so far as the present application is concerned, I have to only examine the changed circumstance, if any; and whether the applicant is entitled for bail on the basis of the said changed circumstance. That issue will have to be answered against the applicant. Hence dismissed.

6. At this stage, counsel for the applicant submits that it be noted that the other issues raised in this application are not pressed before this court

as those have also been raised in substantive writ petition filed by the applicant which is pending before this court.

7. Needless to observe that any observations made in this order will not come in the way of the Applicant in deciding the main proceedings either pending before the trial court or for that matter in the writ petition, which is pending before this court.

8. Application disposed of on the above terms.